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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

AMY COX, an individual,

)Case No. 5:17-CV-001580

**Plaintiff,**

**)COMPLAINT FOR:**

vs.

)1. RESCISSION, DAMAGES, CIVIL  
 ) PENALTIES AND ATTORNEYS FEES  
 ) UNDER TRUTH-IN-LENDING ACT

LB LENDING, LLC, a Nevada limited liability company; and MACOY CAPITAL PARTNERS INC., a California corporation; WATERFALL ASSET MANAGEMENT, LLC, a Delaware corporation.

## Defendants

} 2. INJUNCTION, RESTITUTION AND  
} OTHER RELIEF UNDER CALIFORNIA  
} UNFAIR PRACTICES ACT, BUSINESS  
} AND PROFESSIONS CODE SECTION

### 3. FRAUD

#### 4. BREACH OF FIDUCIARY DUTY

## 5. NEGLIGENCE

**DEMAND FOR JURY TRIAL**

## JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. section 1331 (federal question jurisdiction) and 15 U.S.C. section 1640(e) (TILA jurisdiction). This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. section 1337(a) (supplemental jurisdiction), in that the state law claims are based on the same conduct as the federal claims and are so related that they form part of the same case or controversy.

## VENUE AND INTRA-DISTRICT ASSIGNMENT

9       2. Pursuant to 28 U.S.C. section 1331(b)(2), venue is proper in the U.S. District  
10 Court for the Central District of California because Plaintiff entered into the mortgage  
11 loans that are the subject of this lawsuit in Riverside County, California, and the events  
12 or omissions giving rise to Plaintiff's claims occurred in Riverside County, California.

## PARTIES

14       3. Plaintiff, AMY COX is a natural person residing in Palm Springs, California,  
15 ("Plaintiff"). Plaintiff's principal place of residence is 319 Westlake Terrace, Palm  
16 Springs, CA 92264 (the "Residence").

17       4. Defendant LB LENDING, LLC is a Nevada limited liability company doing  
18 business in the County of Riverside, California, ("Defendant LB Lending").

19       5. Defendant Macoy Capital Partners, Inc. is a California corporation doing  
20 business in the County of Riverside, California, ("Defendant Macoy Capital");

21       6. Plaintiff is informed and believes and upon such information and belief  
22 alleges that Defendant Macoy Capital Partners was the agent, servants, and/or co-  
23 conspirators of Defendant LB Lending, and was acting within the course and scope of  
24 said agency and/or conspiracy.

25        7. Upon information and belief, Defendant Waterfall Asset Management, LLC, is  
26 a Delaware Corporation, by and through Defendant LB Lending, its wholly owned  
27 subsidiary and/or its alter ego, is doing business in the County of Riverside, California.

8. At all times relevant hereto, Defendants regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments, and are the entities to whom the transactions which are the subject of this action are initially payable, making Defendants each a "creditor" within the meaning of and subject to compliance with the Truth In Lending Act ("TILA"), 15 U.S.C. § 1602(f) and Regulation Z §1026.2(a)(17).

## GENERAL FACTUAL ALLEGATIONS

9           9. On or before February 2011, Plaintiff was approached by Defendant Macoy  
10 Capital to extend Plaintiff's then existing loan with Jerome M. Covin, Trustee of the  
11 Covin Family Trust (the "Covin Loan").

12        10. The Covin Loan was set to expire on May 31, 2011, but Defendant Macoy  
13 Capital orchestrated an extension to May 31, 2013.

14        11. Before the Covin Loan was to mature on May 31, 2013, Plaintiff requested  
15 that Defendant Macoy Capital look into refinancing the Covin loan with a traditional  
16 home loan. Specifically, in or around July 30, 2012, Plaintiff requested that Defendant  
17 Macoy Capital try to refinance her Residence with a 30-year fixed term and at a lower  
18 rate.

19        12. Defendant Macoy Capital ignored the request and instead arranged for a  
20 one-year loan with Defendant LB Lending (fka Lincoln Berger), effective on or about  
21 August 2012 ("Loan 1"). Loan 1 closed on or about October 5, 2012. Defendants sent  
22 to Plaintiff the Loan 1 documents only two days before the October 5, 2012 closing  
23 date. Prior to closing Loan 1 with LB Lending, Plaintiff requested a 24-month term, but  
24 that did not happen as Plaintiff was told she would simply have to refinance Loan 1 in  
25 12 months.

26           13. In essence, on or around September 2012, Plaintiff obtained from  
27 Defendants, as "creditors," a consumer loan in the amount of \$180,000.00 secured by a  
28 deed of trust on the Residence (i.e., Loan 1). The purpose of the Loan was to refinance

1 the Covin Loan and for other personal, family or household purposes, and the proceeds  
2 were used as such.

3       14. In early to mid-August 2013, and prior to Loan 1 maturing on August 31,  
4 2013, Defendant Macoy Capital orchestrated an extension of Loan 1's maturity date of  
5 August 31, 2013 to August 31, 2015. The extension did not occur until well after the  
6 August 31, 2013 maturity date. Prior to closing on the Loan 1 extension, Plaintiff  
7 requested in September 2013 if she could get a "traditional loan" (i.e., a 30-year loan  
8 with a lower interest rate). Defendant Macoy Capital ignored the Plaintiff's request for  
9 a traditional loan.

10       15. Defendants did not give Plaintiff the extension documents until well after  
11 the initial maturity date of August 31, 2013 for Loan 1. Defendants thus backdated all  
12 documents related to the extension of Loan 1. That is, Defendants did not provide  
13 Plaintiff with the loan extension documents until sometime on or about September 24,  
14 2013, and Defendant Macoy Capital directed Plaintiff to sign them immediately and  
15 return via overnight mail. Defendants knew or should have known that since the initial  
16 maturity date of August 31, 2013 had passed, that Plaintiff had limited options but to  
17 sign the extension. Loan 1 was thus amended to extend the maturity date of Loan 1  
18 from August 31, 2013 to August 31, 2015.

19       16. During the entire process of Loan 1, including the amendment thereto,  
20 Defendants provided Plaintiff with several loan documents, including: (i) a Promissory  
21 Note for \$180,000.00, (ii) an Occupancy Affidavit And Financial Status; and (iii) a Deed  
22 of Trust With Assignment of Rents, Security Agreements And Fixture Filings, (the  
23 "Deed of Trust").

24       17. The Deed of Trust would be used to secure Loan 1 with Plaintiff's property,  
25 where Plaintiff lives as her principal residence. Plaintiff made clear and Defendants  
26 knew or should have known that Plaintiff's property used to secure Loan 1 was her  
27 principal residence.

28

1           18. The terms of Loan 1 for a principal amount of \$180,000.00 was initially for  
2 a term of 12 months (maturing in August 2013) at an annual interest rate of 8.5%, but  
3 the term was later extended for another 24 months (maturing in August 2015) at the  
4 same annual interest rate of 8.5%.

5           19. Defendants did not ascertain Plaintiff's eligibility for or ability to repay Loan  
6 1. Defendants did not ask Defendant for, nor did Defendants receive, any financial or  
7 employment information.

8           20. Plaintiff was not provided any documents in anticipation of executing the  
9 documents for Loan 1. They were all given to her for immediate execution with closing  
10 to take place within two days. After executing the Loan documents, Plaintiff was not  
11 provided any documents nor mandatory disclosures for Loan 1.

12          21. In fact, the day prior to the date for signing the loan documents was when  
13 Plaintiff learned for the first time in an email from Defendant Macoy Capital that the  
14 interest rate for the loan would be 8.5%, despite Plaintiff's prior repeated requests for  
15 a traditional home loan (longer term with lower interest rate). Only 2 days before  
16 signing the loan documents did Plaintiff learn that the terms of Loan 1 included the  
17 obligation to pay from the proceeds of the Loan the following: a 1% cash point for an  
18 origination fee to Defendant LB Lending of \$1,800.00; a 2% cash point for a broker fee  
19 of \$3,600.00 to Defendant Macoy Capital; cash to Defendant Macoy Capital for cost of  
20 so-called Disclosure/Docs of \$650.00; cash for Prepaid Interest of \$167.67; cash for  
21 title, taxes and recording charge of \$561.00; cash for escrow charges of \$610.00; and a  
22 balloon payment for the full loan amount that would be due on August 30, 2015. The  
23 Loan also provided a default rate of 17.99%. When taking into consideration all of the  
24 above, the Loan is more than 6.5 points above the federal Average Prime Rate Offer, and  
25 was thus a "high cost" or HOEPA loan governed by 15 C.F.R. Section 1026.35 of  
26 Regulation Z.

27          22. At or around closing of Loan 1, Plaintiff in glancing through the documents,  
28 saw that the documents mentioned that Loan 1 was for a business purpose.

1 Thereupon, Plaintiff immediately informed Defendants that the proceeds would be  
2 used to refinance the prior loan on her Residence, and the net proceeds to her would  
3 be used for personal, family and/or household purposes. Defendants responded along  
4 the lines with "don't worry about it; it's just language that we have to use".

5       23. Relying upon Defendants' response, Plaintiff signed the documents for  
6 Loan 1.

7       24. Well after closing on Loan 1 and upon review of the Note evidencing the  
8 Loan, Plaintiff learned:

9               (a) The Note provided for an increase in the interest rate by 5% by way of a  
10 service fee for any payment late by more than ten (10) calendar days;

11               (b) The Note further provided for an increase in the interest rate by 2% by way  
12 of a service fee if the unpaid principal balance due at the maturity date is late; and

13               (c) The Note further provided for an increase in the interest rate to at least  
14 17.99% upon the occurrence of an event of default;

15       25. Defendants knew that Loan 1 was about to mature in August 2015, and  
16 prior to then, Defendant Macoy Capital informed Plaintiff that Defendant LB Lending  
17 would refinance its Loan 1 with a new loan.

18       26. On or about June 10, 2015, Plaintiff obtained from Defendant LB Lending  
19 and Defendant Macoy Capital (collectively, "Defendants"), as "creditors", another  
20 consumer loan in the amount of \$270,000.00, secured by a deed of trust on the  
21 Residence ("Loan 2"). The purpose of the Loan was for personal, family or household  
22 purposes, and the proceeds were used as such.

23       27. During the process of Loan 2, Defendants provided Plaintiff with several  
24 loan documents around two days before closing, including: (i) a Promissory Note for  
25 \$270,000.00, dated June 9, 2015, (ii) an Occupancy Affidavit and Financial Status, and  
26 (iii) a Deed of Trust With Assignment of Rents, Security Agreements And Fixture  
27 Filings, dated June 9, 2015 (the "2015 Deed of Trust"). On or about August 26, 2015,  
28 well after closing on Loan 2, Defendants then provided Plaintiff, for the first time, a

1 Borrower Agreement to sign. Plaintiff eventually signed and returned to Defendants  
2 the Borrower Agreement on or about September 13, 2015.

3       28. The Deed of Trust would be used to secure Loan 2 with Plaintiff's  
4 Residence, where Plaintiff lives as her principal place of dwelling.

5       29. The terms of Loan 2 were for a principal amount of \$270,000.00, and  
6 payable within 24 months at an annual interest rate of 8.5%. The Loan also provides a  
7 default rate of 17.99%. When taking into consideration all of the above, the annual  
8 percentage rate was more than 6.5 points higher than the federal Average Prime Rate  
9 Offer and was thus a "high cost" or HOEPA loan under Regulation Z.

10       30. Defendants did not ascertain Plaintiff's eligibility for or ability to repay Loan  
11 2. Defendants did not ask Defendant for, nor did Defendants receive, any financial or  
12 employment information, even though Plaintiff informed Defendants that she was  
13 unemployed and was looking for employment.

14       31. Plaintiff was not provided any documents in anticipation of executing the  
15 documents for Loan 2. They were all given to her for immediate execution with closing  
16 to take place within a day or two. After executing the Loan documents, Plaintiff was  
17 not provided any documents nor mandatory disclosures for Loan 2.

18       32. Only at closing did Plaintiff learn that the terms of Loan 2 included the  
19 obligation to pay from the proceeds of the Loan the following: a 1% cash point for an  
20 origination fee to Defendant LB Lending of \$2,700.00; a 2% cash point for a broker fee  
21 of \$5,400.00 to Defendant Macoy Capital; cash for processing fee of \$350.00 to  
22 Defendant Macoy Capital; cash for attorneys' fees and cost for Defendant Macoy  
23 Capital's attorneys of \$1,500.00; cash for Prepaid Interest of \$1,275.00; cash for title,  
24 taxes and recording charge of \$945.00; cash for escrow charges of \$935.00; interest on  
25 the entire principal at the rate of 8.5% per annum with a balloon payment due on June  
26 8, 2017, 2015.

27       33. Well after closing on Loan 2 and upon review of the Note evidencing the  
28 Loan, Plaintiff learned:

1                     (a) The Note provided for an increase in the interest rate by 5% by way of a  
2 service fee for any payment late by more than ten (10) calendar days;  
3                     (b) The Note further provided for an increase in the interest rate by 2% by way  
4 of a service fee if the unpaid principal balance due at the maturity date is late; and  
5                     (c) The Note further provided for an increase in the interest rate to at least 17%  
6 upon the occurrence of an event of default;

7                     34. Under both Loans 1 and 2, it is possible that the borrower would have an  
8 interest rate of up to 17% plus pay fees and penalties of another 7% at any time during  
9 the term on of the Loan.

10                    35. The scheme that Defendants put into action was to create sham business  
11 loans in an effort to avoid consumer protection laws such as TILA, Regulation Z, and  
12 other applicable laws. Defendants knew or should have known that: (a) the Plaintiff's  
13 Residence, which was the property used to secure Loans 1 and 2 (collectively, the  
14 "Loans") by LB Lending to Plaintiff, was Plaintiff's principal place of residence; (b) that  
15 the Loans were for refinancing purposes and not for business/investment purposes;  
16 (c) Plaintiff was unemployed at the time of Loan 2, and had effectively no income at the  
17 time of Loan 1.

18                    36. Defendants intentionally and/or negligently cloaked the Loans as business  
19 loans when in fact these were consumer loans secured by Plaintiff's Residence.  
20 Defendants intentionally and/or negligently did so to avoid giving the proper  
21 disclosures and affording Plaintiff the proper protections under TILA, Regulation Z,  
22 and other applicable laws.

23                    37. Defendants' scheme to cloak consumer loans as business loans began when  
24 Defendants knew or should have known that Plaintiff desperately needed to refinance  
25 the Covin Loan, and subsequently the Loans with Defendant LB Lending, as she did not  
26 have the financial means to pay off any of those loans upon their respective maturity.  
27 Defendants, in essence, placed Plaintiff in a spiral of perpetual short-term high-interest  
28 loans. Nevertheless, in an effort to skirt the consumer protection laws such as TILA,

1 Regulation Z, Cal. Bus. & Prof. Code, and other laws, Defendants waited until after the  
2 prior loans had matured and then sent Plaintiff loan documents, asking her to sign  
3 them immediately. Defendants knew or should have known that such timing put  
4 Plaintiff at an incredible disadvantage as she needed to refinance loans that had  
5 already matured, or risk losing her home.

6           38. On or about June 7, 2017, Defendants' attorney sent a demand letter to  
7 Plaintiff saying the Plaintiff is in default on the Note to Defendant LB Lending.

8       39. On or about June 16, 2017, Plaintiff sent a notice of rescission under TILA to  
9 Defendants and expressed a willingness to repay Defendants the amount Plaintiff  
10 would owe as a result of rescission. Within 20 days of the notice of rescission,  
11 Defendants LB Lending and Waterfall Asset Management, failed and continue to fail to  
12 release their security interest in Plaintiff's Residence as required under TILA or to  
13 otherwise cooperate in accomplishing the rescission.

## FIRST CLAIM

(For Violation of Federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq.)

16       40. Plaintiff is a "consumer" within the meaning of Federal Reserve Regulation  
17 Z (hereinafter "Regulation Z," 12 C.F.R. § 1026.2(a)(1) with respect to the loan  
18 transactions described in this Complaint.

19       41. At all relevant times, Defendant LB Lending was a "creditor" within the  
20 meaning of Regulation Z, 12 C.F.R. § 1026.2(a)(17) and as defined in 15 U.S.C. §  
21 1602(g) of the Truth-in-Lending Act ("TILA"), in that Defendant LB Lending: (1)  
22 regularly extended consumer credit in the form of mortgage loans that were payable in  
23 more than four installments and for which the payment of a finance charge was  
24 required; and (2) was the "person" to which those mortgage loans were initially  
25 payable.

26 42. On or about May 8, 2009 and ever since then, Plaintiff had an "ownership  
27 interest" (within the meaning of Regulation Z, 12 C.F.R. §1026.23(a)) in the real  
28 property located at 319 Westlake Terrace, Palm Springs, CA 92264 (the "Residence").

1 At all relevant times, the Residence was Plaintiff's "principal dwelling" within the  
2 meaning of Regulation Z, 12 C.F.R. §1026.23(a).

3       43. At all relevant times, Defendant LB Lending's agent, Defendant Macoy  
4 Capital were "loan originators" as defined in 12 C.F.R. § 1026.36(a) of Regulation Z, in  
5 that Defendant Macoy Capital, by and through its employees and/or agents, Mitch  
6 Ohlbaum and David Rosenberg, were persons who, for compensation or other  
7 monetary gain, or in expectation of compensation or other monetary gain, arranged,  
8 negotiated, or otherwise obtained an extension of consumer credit for another person,  
9 including Plaintiff.

10     44. The Loans originated by Defendant Macoy Capital on behalf of Plaintiff  
11 were secured by a "dwelling" as defined by 15 U.S.C. §1602(w) of TILA, in that they  
12 were residential structures or mobile homes that contained one to four family housing  
13 units or individual units of condominiums or cooperatives.

14     45. Under the Truth-in-Lending Act, 15 U.S.C. § 1635 and Regulation Z, 12 C.F.R.  
15 § 1026.23, Defendants were required to provide Plaintiff with a prescribed form of  
16 notice of Plaintiff's three-day right to cancel the Loans. Defendants failed to comply  
17 with Section 1635.

18     46. Under the Truth-in-Lending Act, 15 U.S.C. § 1638 and Regulation Z, 12 C.F.R.  
19 § 1026.18, Defendants were required to provide Plaintiff with a prescribed form of  
20 notice and disclosure of the material terms of the Loans, including the annual  
21 percentage rate, finance charge, amount financed, total of payments, payment  
22 schedule, the security interest Defendants were retaining and other information.  
23 Defendants failed to comply with Sections 1638 and 1026.18. No disclosures were  
24 provided.

25     47. Regulation Z required the Defendants, and each of them to consider,  
26 document and verify Plaintiff's ability to repay the Loans, none of which Defendants  
27 even started to do. 12 C.F.R. §1026.43(c)(5). As mentioned above, Plaintiff was  
28 unemployed at the time of Loan 2, and had effectively no income at the time of Loan 1.

1           48. In calculating a borrower's ability to repay a loan such as Loan 1 and Loan  
2, a creditor is required by Regulation Z to assume that the borrower's monthly  
3 payments are equal to any balloon payment. Special rules apply for loans with a  
4 balloon payment, interest-only loans, and negative amortization loans. A creditor must  
5 make the consideration required under paragraph (c)(2)(iii) of this section for: (A) a  
6 loan with a balloon payment, as defined in § 1026.18(s)(5)(i), using: (1) The maximum  
7 payment scheduled during the first five years after the date on which the first regular  
8 periodic payment will be due for a loan that is not a higher-priced covered transaction;  
9 or (2) The maximum payment in the payment schedule, including any balloon  
10 payment, for a higher-priced covered transaction.

11           49. The Loans were "high cost" loans that were arranged through the services  
12 of Defendant Macoy Capital, a mortgage broker. A "high-cost loan" is defined as any  
13 consumer home loan where the annual percentage rate ("APR") exceeds 6.5 percentage  
14 points over the average prime rate offer index in a case of a first lien transaction. 12.  
15 C.F.R. 1026.35. Here, the Loans had an effective APR at or above 10.5%, and at all  
16 relevant times the average prime rate offer index ranged from 3.04 to 3.24%.

17           50. Because the Loans were high cost, Regulation Z's Home Owner Equity  
18 Protection Act provisions ("HOEPA") required additional disclosures at least three  
19 days before consummation of the transaction. (15 U.S.C. § 1639(b)(1).) Substantively,  
20 HOEPA generally precludes any prepayment penalty provision in the loan (15 U.S.C. §  
21 1639(c)), prohibits increases in the interest rate charged following any default (id., §  
22 1639(d)), and bars negative amortization (id., § 1639(f)) and more than 2 prepaid  
23 monthly payments (id., § 1639(g)). Most importantly, HOEPA requires that a lender  
24 consider a borrower's ability to repay a loan. Any failure of the creditor to comply with  
25 the requirements of HOEPA is treated as a failure to deliver material disclosures,  
26 thereby triggering the debtor's right to rescind. (15 U.S.C. § 1639(j).) Defendants, and  
27 each of them failed to comply with any aspects of HOEPA.

28

1           51. Because the annual percentage rate exceeded 6.5 points over the Average  
2 Prime Rate Offer threshold under HOEPA amendments to TILA, codified at 15 U.S.C.  
3 §1639, Defendants were required to provide Plaintiff with a prescribed form of notice  
4 and early waiting period before the Plaintiff became obligated under any loan  
5 contracts. No notice or waiting period was provided. In addition, because the loans  
6 were subject to HOEPA, Defendants were prohibited from inserting into the  
7 promissory notes any provision for a balloon payment and from making a loan without  
8 considering the ability of Plaintiff to repay the same. Defendants violated both aspects  
9 of HOEPA.

10         Because the annual percentage rate of the Loans exceeded 6.5 points over the Average  
11 Prime Rate Offer threshold under the Regulation Z and were thus "high cost" loans,  
12 Defendants were required to provide Plaintiff with a prescribed form of notice and  
13 early waiting period before the Plaintiff became obligated under any loan contracts.

14         See 12 C.F.R. §1026.35. Defendants failed to do so.

15         52. Because the balloon payment called for in the note in Loan 1 was  
16 \$180,000.00, Plaintiff would have had to ascertain that Plaintiff had a monthly income  
17 sufficient to make a monthly mortgage payment of \$180,000.00, which of course,  
18 Plaintiff did not even come close to having.

19         53. Similarly, because the balloon payment called for in the note in Loan 2 was  
20 \$270,000.00, Plaintiff would have had to ascertain that Plaintiffs had a monthly income  
21 sufficient to make a monthly mortgage payment of \$270,000.00, which of course,  
22 Plaintiff did not even come close to having.

23         54. As a result of the above violations of TILA, this complaint again serves as  
24 notice under 15 U.S.C. Section 1635 that Plaintiff demands rescission of the Loan  
25 against Defendants, and each of them. By operation of law the deed of trust upon the  
26 Property is now void and Defendants have a legal obligation to reflect that it has been  
27 eliminated as a lien on Plaintiff's home.

28

55. As a result of the above violations of TILA, on June 16, 2017, Plaintiff served Defendants notice of Plaintiff's election to rescind Loan 2. Defendants failed and refused to comply with the rescission request or to perform their obligations under TILA. In contravention of their obligations under TILA to reconvey the Deed of Trust, Defendants have threatened to file a Notice of Default and to take other action to attempt to enforce the now void Deed of Trust for the Loans.

7       56. Plaintiff is entitled to the following relief by reason of the foregoing  
8 violations of TILA by Defendants: (1) an order confirming that Plaintiff has validly  
9 rescinded Loans 1 and 2 and has the right to repay the principal of the Loans with  
10 credit for all finance charges and payments Plaintiff has made, (2) statutory damages  
11 for violation of HOEPA equal to the sum of all finance charges in the Loan transactions,  
12 (3) a civil penalty of \$2,000 each for Defendants' wrongful refusal to recognize  
13 Plaintiff's June 16, 2017 rescission demand, (4) civil penalties and damages for  
14 violation of HOEPA and TILA's disclosure regime, and (5) statutory attorneys' fees at a  
15 multiple to be determined by motion.

## SECOND CLAIM

#### **(Unfair Business Practices)**

57. Plaintiff incorporates by this reference all earlier paragraphs.

19       58. Plaintiff alleges on information and belief that within four years past and  
20 continuing until the present time Defendants engaged in and are engaging in business  
21 practices which are unfair, deceptive, untrue and/or fraudulent within the meaning of  
22 California Business and Professions Code Section 17200 et seq., in that Defendants  
23 regularly violated TILA and HOEPA in the Loans transactions with consumers.

24        59. By reason of the foregoing unfair business practices Plaintiff seeks the  
25 following relief:

(a) Temporary, preliminary and permanent injunctive relief restraining Defendants' future violation of the complained of business practices;

(b) Restitution of interest, fees, finance charges and other amounts paid by Plaintiff to Defendants during the last four years; and,

(c) An order giving Plaintiff her rights under TILA and HOEPA by reason of the violations of those sections by Defendants.

### THIRD CLAIM

(Fraud)

60. Plaintiff incorporates by this reference all earlier paragraphs.

8           61. At all relevant times, Plaintiff's purpose for Loans 1 and 2 with Defendant  
9 LB Lending was to refinance the prior Covin Loan, which was secured by her  
10 Residence, and to provide additional income for personal, family, or household  
11 purposes.

12       62. At the time Loan 2 was made, Plaintiff was unemployed and the net  
13 proceeds from Loan 2, after refinancing Loan 1, was so that Plaintiff could purchase  
14 daily necessities such as food, clothing, transportation, and to pay ongoing utility and  
15 HOA bills, make necessary home and car repairs, etc. Plaintiff informed Defendants of  
16 such purpose for the Loans.

17       63. Plaintiff informed Defendants that she did not have, at all relevant times, a  
18 business or commercial operation of any sorts, and did not understand language in the  
19 documents for the Loans that mentioned that the purpose of the Loans was for  
20 business purposes and not for personal, family, or household purposes. Whereupon,  
21 Mitch Ohlbaum and David Rosenberg, the loan officers of Defendant Macoy Capital,  
22 who in turn were the agents and representatives of Defendants LB Lending and  
23 Waterfall Asset Management, repeatedly said, "not to worry about it."

24       64. Defendants knew or should have known that the Loans were for personal,  
25 family, or household purposes; knew or should have known that Plaintiff did not have  
26 any business purpose for the Loans nor was Plaintiff contemplating starting any  
27 business; knew or should have known that Plaintiff was unemployed at the time of  
28 refinancing Loan 1 with Loan 2; knew or should have known that Plaintiff would rely

1 on its statements that Plaintiff need not worry about the language regarding the Loans  
2 for a business purpose; knew or should have known that the Loans were sham  
3 business loans and were in reality consumer loans; and that Defendant Macoy Capital  
4 intended to create such sham business loans as a way to avoid all the consumer law  
5 protection for Plaintiff.

6       65. Defendant Macoy Capital made such false statements with the intent to  
7 induce Plaintiff to rely on them, so that it could receive fees and commission and that  
8 Defendants LB Lending and Waterfall Asset Management would receive interest and  
9 balloon payments and fees.

10      66. After Loan 2 closed on or about June 10, 2015, Defendants sent Plaintiff on  
11 or about August 26, 2015, a request that she complete and sign a Borrower's  
12 Agreement. This form included the language that Loan 2 was for an investment  
13 purpose, and when asked about this, Defendants response was as before in that  
14 Plaintiff should "not worry about it." Moreover, all the forms were left blank as to what  
15 is the stated purpose of the business or investment. Defendants intentionally did not  
16 pursue this information as they knew or should have known that the purpose of the  
17 Loans was for personal, family, or household purposes.

18      67. Defendants also included a credit report with outdated information that  
19 showed Plaintiff living in Los Angeles, California at the time of Loan 1. That credit  
20 report was based on Plaintiff's prior home, which she sold in March 2009, well before  
21 any of the Loans were made.

22      68. Defendants knew or should have known that at all relevant times, Plaintiff's  
23 principal place of Residence and dwelling was at 319 Westlake Terrace, Palm Springs,  
24 California, which was the property secured by a Deed of Trust, which at all relevant  
25 times, is held by Defendant LB Lending and/or Defendant Waterfall Asset Management,  
26 as the alter ego of Defendant LB Lending.

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1        69. Defendants knowingly concealed the fact that they had included false  
2 information about Plaintiff's purpose for the Loans, her employment status, her  
3 Residence, and Defendants falsified other related documents.

4       70. Plaintiff discovered Defendants' fraud upon Defendants threat to file a  
5 notice of default, at which time, Plaintiff retained counsel and reviewed the false  
6 information and documents used for Loans 1 and 2. Even if Plaintiff is held to have  
7 known or should have known of the Defendants' fraudulent conduct and/or scheme to  
8 defraud at the time of Loan 2, she is well within the three-year statute of limitations as  
9 Loan 2 was made on or about June 2015.

10       71. Defendants' fraud and/or scheme to defraud Plaintiff has caused damage to  
11 Plaintiff in that she would not have foregone any of the consumer protection laws  
12 afforded to her, including but not limited to her rights under TILA and Regulation Z  
13 that entitle her to rescind the Loans, obtain the Deed of Trust of her residence, and  
14 credit against the Loans' amounts all interest, fees and other costs she paid and/or  
15 incurred.

#### FOURTH CLAIM

#### (Breach of Fiduciary Duties)

18 72. Plaintiff incorporates by this reference all earlier paragraphs.

19       73. As the mortgage broker, Defendant Macoy Capital owes a fiduciary duty to  
20 Plaintiff, the borrower. In relevant part, California Bus. & Prof. Code section 10131,  
21 subdivision (d) defines a real estate broker as a person who, for compensation or  
22 expectation of compensation, “[s]olicits borrowers or lenders for or negotiates loans or  
23 collects payments or performs services for borrowers or lenders or note owners in  
24 connection with loans secured directly or collaterally by liens on real property or on a  
25 business opportunity.” Defendant Macoy Capital by and through its employees and/or  
26 owners and/or agents, Mitch Ohlbaum and David Rosenberg, received compensation  
27 as part of Loans 1 and 2.

1       74. Defendant Macoy Capital breached its fiduciary duties to Plaintiff by failing  
2 to provide the proper disclosure under TILA and Regulation Z, as well as any and all  
3 other consumer law protections.

4        75. Defendant Macoy Capital further breached its fiduciary duties to Plaintiff by  
5 engaging in fraudulent conduct and/or being part of a scheme to defraud Plaintiff into  
6 entering into Loans 1 and 2 as sham business loans.

7        76. Defendant Macoy Capital's breach of its fiduciary duties to Plaintiff has  
8 caused damage to Plaintiff in that she would not have foregone any of the consumer  
9 protection laws afforded to her, including but not limited to her rights under TILA and  
10 Regulation Z that entitle her to rescind the Loans, obtain the Deed of Trust of her  
11 residence, and credit against the Loans' amounts all interest, fees and other costs she  
12 paid and/or incurred.

## FIFTH CLAIM

(Negligence)

15 77. Plaintiff incorporates by this reference all earlier paragraphs.

16       78. Defendants owed a duty to Plaintiff by providing the proper loan  
17 disclosures under TILA and Regulation Z. Defendants breached that duty by and  
18 among: (i) failing to train and/or supervise Mitch Ohlbaum and David Rosenberg as its  
19 employees, partners, and/or agents to ensure that the proper loan documentation and  
20 disclosures for consumer loans were provided to Plaintiff; (ii) failing to have the  
21 necessary safeguards in place such as requiring that a business purpose be listed prior  
22 to closing on so-called business loans; (iii) failing to have the necessary safeguards in  
23 place to prevent its employees, partners, owners, and agents from procuring sham  
24 business loans and/or predatory consumer loans.

25        79. Defendants' negligence has caused damage to Plaintiff in that she would not  
26 have foregone any of the consumer protection laws afforded to her, including but not  
27 limited to her rights under TILA and Regulation Z that entitle her to rescind the Loans,

1 obtain the Deed of Trust of her residence, and credit against the Loans' amounts all  
2 interest, fees and other costs she paid and/or incurred.

3 WHEREFORE, Plaintiff prays as follows:

4 As to First Claim for Relief:

- 5 1. A declaration that Plaintiff has validly rescinded her Loans under the Truth in  
6 Lending Act and is entitled to the appropriate remedies flowing from such rescission;  
7 2. For actual and statutory damages and penalties as alleged herein;  
8 3. Statutory attorneys' fees at a multiple to be determined by motion, and  
9 4. Actual damages in an amount to be proven at time of trial.

10 As to the Second Claim for Relief:

- 11 1. A reduction in the Loan balance equal to all interest and fees paid by Plaintiff  
12 for Loans 1 and 2;  
13 2. Money damages to the extent the interest paid exceeds the remaining debt;  
14 and,  
15 3. Three times the interest paid within the past four years.

16 As to the Third Claim for Relief:

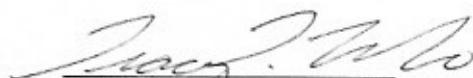
- 17 1. Temporary, preliminary and permanent injunctive relief restraining  
18 Defendants' future violation of the complained of business practices;  
19 2. Restitution of interest paid to Plaintiff who has been negatively affected by  
20 the unfair business practices during the last four years; and,  
21 3. An order giving Plaintiff her rights under TILA and HOEPA by reason of the  
22 violations of those sections by Defendants.

23 As to all claims for relief:

- 24 1. Payment by Defendants to counsel for the Plaintiff of reasonable attorneys'  
25 fees by the statute sought to be enforced or alternatively, under the substantial benefit  
26 doctrine, or alternatively, under the common fund doctrine from sums collected from  
27 Defendants for distribution to injured parties;  
28 2. Costs of the action; and

1           3. General relief.

2           Dated August 4, 2017



3           Tracy T. Woo  
4           Attorney for Plaintiff

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6           DEMAND FOR JURY TRIAL

7           Plaintiff demands trial by jury on each of the above claims for relief.

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9           Dated: August 4, 2017



10           Tracy T. Woo  
11           Attorney for Plaintiff

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